

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Service Quality, Customer Satisfaction,)	
Infrastructure and Operating Data Gathering)	WC Docket No. 08-190
)	
Petition of AT&T Inc. for Forbearance)	
Under 47 U.S.C. § 160(c) From)	WC Docket No. 07-139
Enforcement of Certain of the Commission's)	
ARMIS Reporting Requirements)	
)	
Petition of Qwest Corporation for)	
Forbearance from Enforcement of the)	
Commission's ARMIS and 492A)	
Reporting Requirements Pursuant to 47)	
U.S.C. § 160(c))	
)	
Petition of the Embarq Local Operating)	
Companies for Forbearance Under)	
47 U.S.C. § 160(c) From Enforcement)	WC Docket No. 07-204
of Certain of ARMIS Reporting)	
Requirements)	
)	
Petition of Frontier and Citizens ILECs)	
for Forbearance Under 47 U.S.C. § 160(c))	
From Enforcement of Certain of the)	
Commission's ARMIS Reporting)	
Requirements)	
)	
Petition of Verizon for Forbearance)	
Under 47 U.S.C. § 160(c) From Enforcement)	
of Certain of the Commission's)	
Recordkeeping and Reporting Requirements)	WC Docket No. 07-273
)	
Petition of AT&T Inc. For Forbearance)	
Under 47 U.S.C. § 160 From Enforcement)	
of Certain of the Commission's)	
Cost Assignment Rules)	WC Docket No. 07-21

**REPLY COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

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December 12, 2008

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I. INTRODUCTION

The New Jersey Division of Rate Counsel (“Rate Counsel”) welcomes the opportunity to participate in the proposed rulemaking by the Federal Communications Commission (“FCC” or “Commission”) regarding the appropriate reporting requirements for the industry, in light of the FCC’s conditional forbearance from ARMIS reporting granted to carriers in September 2008.¹ The data that the FCC collects and reports bears directly on Rate Counsel’s ability to represent consumers effectively.²

A. INTEREST OF RATE COUNSEL IN THE INSTANT PROCEEDING.

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel’s continued participation and interest in implementation of the

¹ / *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, et al.*, WC Docket Nos. 08-190, *et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (Order and NPRM) (*see, especially, id.*, at paras. 33-36). As set forth in the Federal Register, initial comments were due November 14, 2008, and reply comments are due December 15, 2008. *Federal Register*, Vol. 73, No. 200, Wednesday October 15, 2008, at 60997.

² / Rate Counsel has participated in previous proceedings concerning reporting of industry information. *See, e.g., In the Matter of Petition of Verizon for Forbearance Under 47 C.F.R §160(c) From Enforcement of Certain of the Commission’s Recordkeeping and Reporting Requirements*, WC Docket No. 02-273; *In the Matter of Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain ARMIS Reporting Requirements*, WC Docket No. 07-204; *In the Matter of Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s ARMIS Reporting Requirements*, WC Docket No. 07-204, New Jersey Rate Counsel and the National Association of State Utility Consumer Advocates (“NASUCA”) initial and reply comments submitted on February 1, 2008, and March 17, 2008, respectively; *In the Matter of Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission’s ARMIS Reporting Requirements*, WC Docket No. 07-139, initial comments, August 20, 2007; reply comments, September 19, 2007. Rate Counsel also submitted detailed comments in the FCC’s original “data gathering” docket, and then also in the subsequent phases of WC Docket No. 07-38: June 15, 2007; July 16, 2007; August 1, 2008 (data gathering); reply comments (with NASUCA), September 2, 2008 (data gathering); July 17, 2008 (broadband mapping); August 1, 2008 (broadband mapping).

Telecommunications Act of 1996.³ The New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and it has found that competition will “promote efficiency, reduce regulatory delay, and foster productivity and innovation” and “produce a wider selection of services at competitive market-based prices.” The Commission’s findings regarding data collection and reporting directly affect Rate Counsel’s ability to represent consumers effectively.

B. SCOPE OF PROCEEDING

The FCC granted AT&T’s petition for forbearance from ARMIS service quality and infrastructure reporting, with some exceptions⁴ and subject to certain conditions. The FCC also extended the conditional forbearance from these ARMIS reports to all carriers that otherwise would be required to file them.⁵ The service quality and infrastructure reports include ARMIS Reports 43-05, 43-06, 43-07, and 43-08. The carriers that submit ARMIS reports 43-05 through 43-08 have committed to continue filing these reports for 24 months.⁶

In the *NPRM*, the FCC seeks comment on the possibility of industry-wide collection of data. The FCC seeks comment generally on: (1) whether and how the

³ / Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act”). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as “the 1996 Act,” or “the Act,” and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

⁴ / Specifically, the carriers must still report business line count information used for non-impairment thresholds for unbundling rules (ARMIS Report 43-08, Table II, columns FC, FD, and FE) and switched access line data used by the Universal Service Administration Corporation to calculate growth in access lines to determine interstate access support (ARMIS Report 43-08, Table III, column FI). *Order and NPRM*, at paras. 19-20.

⁵ / *Order and NPRM*, at para. 7. The FCC, in the same *Order*, also extended to Verizon and Qwest the conditional forbearance that the FCC had extended to AT&T in the *AT&T Cost Assignment Forbearance Order*. *Id.*

⁶ / *Id.*, at paras. 12, 21.

Commission should collect data on an industry-wide basis;⁷ (2) the scope of the information to be collected;⁸ and (3) the mechanism for collecting information.⁹

The Commission's deliberations in this proceeding affect the public interest because, among other things:

- A national database of public information provides a valuable tool to state and federal regulators for benchmarking. Modifications to the existing reporting systems bear directly on consumer advocates' ability to compare service quality performance, infrastructure characteristics, and operating data among incumbent local exchange carriers ("ILEC"). Therefore, the outcome of this proceeding affects consumer advocates' ability to participate effectively in state and federal regulatory proceedings.
- An ARMIS-like, national database provides a public source of information. Information about carriers' operations is important to ensure that the marketplace works efficiently, consumers have open access to information, and regulators can detect where consumers are receiving sub-par levels of quality for basic service. Therefore, industry efforts in this proceeding to either eliminate reporting or to classify such information as confidential would hamper Rate Counsel's and other consumer advocates' ability to protect consumers.

Rate Counsel concurs with Commissioner Adelstein that "[j]ust as an airplane pilot would not land a plane with eyes closed and instruments off, the Commission must

⁷ / *Id.*, at para. 33.

⁸ / *Id.*, at paras. 34-35.

⁹ / *Id.*, at para. 36.

ensure that its decision-making is guided by sufficient data.”¹⁰ Moreover, Rate Counsel urges the Commission to afford more weight to the support expressed in initial comments by regulators and consumer advocates, which support the continued collection of at least some of the data that is now reported in the ARMIS system,¹¹ than to industry’s unpersuasive assertions that such data collection is unnecessary.¹²

II. WHETHER AND HOW THE FCC SHOULD COLLECT DATA ON AN INDUSTRY-WIDE BASIS.

Although Rate Counsel does not oppose industry-wide data reporting, reporting by ILECs continues to be uniquely important.

Rate Counsel welcomes broad industry reporting of relevant data, but, in some instances, asymmetric reporting may be appropriate. For example, service quality information is an important tool for regulators to detect whether regulatory and market incentives are sufficient to yield adequate service quality of basic service offered by incumbent carriers. Because there are few or no alternatives to the stand-alone basic local service that ILECs offer, information about the service quality offered by competitive local exchange carriers (“CLEC”), is not as essential for policy-making

¹⁰ / *Order and NPRM*, Statement of Commissioner Jonathan S. Adelstein, Approving in Part, Dissenting in Part, Concurring in Part, at 51.

¹¹ / *See, e.g.*, California Public Utilities Commission and the People of the State of California (“CPUC”), at 2; Texas Office of Public Utility Counsel (“TxOPC”), at 2; Free Press, at 1; Michigan Public Service Commission. The relatively small number of consumer advocates and regulators that submitted initial comments in this proceeding should not be construed as lack of interest in the ARMIS reporting, but rather as a probable reflection of limited state agency resources likely being expended on the Commission’s pending investigation into universal service and intercarrier compensation reform. *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking , FCC 08-262 (rel. Nov. 5, 2008).

¹² / *See, e.g.*, AT&T Inc. (“AT&T”); Qwest Communications International Inc. (“Qwest”); Verizon; Competitive Enterprise Institute; National Cable and Telecommunications Association (“NCTA”); CTIA; Wireless Communications Association International, Inc. (“WCAI”).

purposes as is information about ILECs' performance.

Therefore, although ARMIS requirements apply only to a subset of providers,¹³ this "subset" consists of precisely those carriers that serve the vast majority of consumers, and that dominate telecommunications markets. Rate Counsel does not oppose expanding reporting requirements to the entire industry,¹⁴ but only if such efforts do not interfere with the larger goal of ensuring that incumbent carriers continue to file relevant data.

III. THE SCOPE OF THE INFORMATION TO BE COLLECTED.

Although, as industry suggests, consumers may not avail themselves of ARMIS, consumer advocates rely routinely on ARMIS to protect consumers' interests.

Rate Counsel acknowledges that, as industry asserts, consumers may be unlikely to avail themselves directly of ARMIS, or of an ARMIS-like system.¹⁵ However advocates, seeking to protect consumers' interests, *do* rely on the specific, quantitative information¹⁶ contained in ARMIS, and, therefore, consumers benefit indirectly from the availability of ARMIS.¹⁷ ARMIS data allows policy makers to compare, for example, the timeliness of repair and installation of basic dial tone among carriers, across states, between rural (non-MSA) and urban (MSA) areas, and over particular time spans. Furthermore, the theoretical concerns that the Commission raised about carriers reducing network investment to increase short-term profit¹⁸ continue to apply as carriers divert

¹³ / See e.g., *Order and NPRM*, at paras. 11, 13, and 21.

¹⁴ / See, e.g., CPUC, at 8-11.

¹⁵ / Verizon and Verizon Wireless, at 4; Qwest Communications International Inc. ("Qwest") at 2; Competitive Policy Enterprise, at 4.

¹⁶ / See AT&T, at 7 (describing ARMIS as "abstract").

¹⁷ / **cite to some NJ or NASUCA comments/affidavits where we rely on ARMIS infrastructure and sq data.

¹⁸ / **cite to price cap order and to the 9/08 order

resources to unregulated lines of business: ARMIS data enables policy-makers to detect where carriers may be neglecting the basic network infrastructure and the basic customer.

Information in a national database allows consumer advocates to compare levels of service quality and infrastructure across states, among operating companies, and across years to assess whether differing regulatory framework and differing markets lead to different outcomes.¹⁹ Initial comments do not dissuade Rate Counsel from its support for a database that the FCC maintains, that is public, and that all can access.

Modifications to the infrastructure reports to correspond with evolving technology would be reasonable.

Rate Counsel welcomes modifications to the FCC's infrastructure reports to exclude outdated technologies (such as electromechanical switches) and to include new technologies (such as VoIP and video services).²⁰ Rate Counsel also welcomes the expanded broadband reporting requirements that will result from the FCC's *Form 477 Order* and the Broadband Data Improvement Act,²¹ but unlike ARMIS data, the Form 477 data is afforded proprietary status. Rate Counsel also concurs with FreePress that including service quality for the entire broadband market would be useful.²² As the nation increasingly depends on broadband for everyday economic and social activities, the level of service quality provided for the duopoly-controlled broadband platform takes on increasing importance.

Other sources of information about carriers may be helpful but do not substitute or duplicate the quantitative carrier-specific and state-specific data that ARMIS reports.

¹⁹ / CPUC, at 2; TxOPC, at 2-3.

²⁰ / TxOPC, at 5. *See also* FreePress, at 5-9.

²¹ / Broadband Data Improvement Act, Pub. L. No. 110-385 (2008).

²² / FreePress, at 7.

Carriers refer to surveys conducted by J.D. Power and Associates and the Michigan Ross School of Business, and also to other unspecified sources of information, and assert that these various sources make ARMIS reports unnecessary.²³ The information cited, although useful, does not substitute for the state-specific quantitative data on such metrics as the number of hours that basic lines are out of service, the percentage of installation commitments met, etc.²⁴ Precisely because the FCC possesses the requisite authority to seek and to obtain specific, quantitative data about particular metrics, an option which cannot be pursued by private sources, FCC-gathered data is unique and important. There are no assurances that private sources will continue to report data in the future or make such data available to the public. Furthermore, the survey data, unlike the data that the FCC now collects and reports, does not differentiate between MSA and non-MSA service quality. Competition is evolving at different rates, and, therefore, it is essential that consumer advocates have the ability to detect service quality provided in rural areas separately from that provided in urban areas.

Rate Counsel disagrees that market mechanisms rather than federal regulation can be relied upon to resolve information asymmetries.²⁵ Where markets are not yet fully competitive, it is essential that regulators possess detailed data to use not only to publicize for consumers' benefit, but also, to assist regulators in conducting their oversight effectively.

²³ / See, e.g., Verizon and Verizon Wireless, at 7; AT&T, at 7-8; Competitive Enterprise Institute, at 2-3.

²⁴ / <http://www.jdpower.com/telecom/ratings/telephone-service-provider-ratings>;
http://www.theacsi.org/index.php?option=com_content&task=view&id=149&Itemid=157&c=Verizon+Communications+Inc.

²⁵ / Competitive Enterprise Institute, at 3.

Carriers rely on purported competition as a reason that reporting requirements are unnecessary.²⁶ The competition that is emerging between telecommunications and cable companies is based typically on a duopoly between the incumbent telecommunications carrier and the incumbent cable company. Furthermore, those who continue to subscribe to wireline service are precisely those with the lowest elasticity of demand, and, therefore the most vulnerable to service quality deterioration.

Carriers have not demonstrated that the burden of reporting outweighs the benefit to policymakers.

Rate Counsel urges the Commission to afford minimal weight to the purported burdens associated with reporting.²⁷ It would be reasonable to assume that carriers track their service quality and their infrastructure as an integral component of conducting business. If carriers are truly concerned about avoiding the consequence of losing customers to competitors in the wake of poor service quality, presumably carriers are actively monitoring the quality of their service. The value to federal and state policymakers of having access to these data outweighs the additional step of reporting that data to the FCC.

Rate Counsel is not persuaded that simply because providers are increasingly bundling local service with other services that data has become irrelevant.²⁸ Carriers' competition for high-volume triple play customers does not diminish the importance of the timely installation and repair of basic local service, regardless of how it is priced and

²⁶ / Verizon and Verizon Wireless, at 9; AT&T, at 2, 5-6; NCTA, at 3.

²⁷ / See, e.g., Verizon and Verizon Wireless, at 9; Qwest, at 3; AT&T, at 2-3; NCTA, at 4; Competitive Enterprise Institute, at 4; CTIA, at 5.

²⁸ / See, e.g., Verizon and Verizon Wireless, at Attachment A, page 1.

packaged. Consumer advocates and regulators require access to objective data so that they can detect market imperfections, and pursue appropriate regulatory intervention.²⁹

IV. THE MECHANISM FOR COLLECTING DATA.

The FCC should minimize the amount of data that is afforded proprietary treatment.

ARMIS data is public,³⁰ which enables open comparative analyses of industry trends based on time series analyses, across state jurisdictions, between rural and urban areas, and among operating companies. Industry concern about duplicative broadband reporting³¹ (which theoretically could occur as a result of the FCC's directives in WC Docket No. 07-38 and in this proceeding) only has merit if the information is truly duplicative. The ARMIS-based information is public and, therefore, if the information submitted as a consequence of the data reporting docket WC Docket No. 07-38 is proprietary, the Commission should not consider such parallel efforts to be duplicative. Broadband data, presented in general form, may be considered public and similar data, presented in granular form, may be designated as proprietary.³² In this example, the information reported by the FCC is not identical.

Public access wherever there is not a compelling showing of competitive harm, is essential. Therefore, the FCC should reject AT&T's recommendation that the Commission modify the Form 477 to collect infrastructure data and have such data not

²⁹ / CPUC, at 6. Numerous state commissions continue to address concerns about service quality. **cites to CT, West Virginia, Maryland, etc.

³⁰ / See TxOPC, at 5-6; FreePress, at 9-10.

³¹ / Qwest, at 5.

³² / **cite to and/or quote from 2008 Rate Counsel comments in 07-38 advocating that data be public as much as possible.

subject to public review and disclosure.³³ The FCC's over-arching goals should be to keep as much information public as is feasible and in the public interest. Furthermore, the Commission should not re-designate as proprietary information that now is provided on a public basis because such re-designation would constrain unduly consumer advocates' ability to analyze and monitor industry performance. State advocates and regulators raise valid concerns about the reclassification of information that is now public as proprietary if the reporting mechanism shifts to Form 477.³⁴

Consumer advocates should have access to any data that is submitted on the Form 477.

The FCC's regulations provide an explicit opportunity for state commissions to receive provider-specific Form 477 data, but do not include a parallel opportunity for state consumer advocates. 47 U.S.C. §1.7001(d) states:

Respondents may make requests for Commission non-disclosure of provider-specific data contained in FCC Form 477 under Sec. 0.459 of this chapter by so indicating on Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure or provider-specific information, except that the Chief of the Wireline Competition Bureau may release provider-specific information to a state commission provided that the state commission has protections in place that would preclude disclosure of any confidential information.

47 U.S.C. §43.11 (c) states:

Respondents may make requests for Commission non-disclosure of provider-specific data contained in the Form 477 under Sec. 0.459 of this chapter by so indicating on the Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Common Carrier Bureau may release provider-specific information to a state commission,

³³ / AT&T, at 10.

³⁴ / CPUC, at 7; Michigan Public Service Commission, at 3-5.

provided that the state commission has protections in place that would preclude disclosure of any confidential information.

Rate Counsel supports revisions to the FCC's rules that would provide consumer advocates comparable access to confidential Form 477.³⁵

The lag in time does not render government-gathered data irrelevant.

CTIA states that because wireless carriers are constantly expanding coverage and innovating service, Commission reports would be "extremely outdated and therefore misleading to consumers."³⁶ Rate Counsel urges the the Commission to reject the industry's off-the-mark concerns about staleness of the data that the Commission collects and reports. A lag time between the collection and reporting of data is typical of government and non-government reports. For example, the JD Power and Associates "2008 Residential Telephone Customer Satisfaction Study is based on responses collected in July 2008 from more than 13,600 customers nationwide who receive their local and long distance telephone service from one provider."³⁷ Furthermore, despite a time lag, the data will still enable valid analyses of trends.³⁸

Data collection requirements should not sunset.

The Commission should reject AT&T's proposal that any new data collection requirements or any extension of existing data collection requirements sunset after 24

³⁵ / TxOPC, at 6-7 (stating that Form 477 regulations allow the FCC's Wireline Competition Bureau to allow states with certain protections in place to have access to Form 477 data, citing 47 C.F.R. § 1.7001(d); 47 C.F.R. § 43.11(c)).

³⁶ / CTIA, at 4.

³⁷ / <http://www.jdpower.com/corporate/news/releases/pressrelease.aspx?ID=2008180> (accessed December 9, 2008). Furthermore, the survey does not encompass customers whose long distance carrier differs from their local provider. *Id.*

³⁸ / **cite to Rate Counsel comments in forbearance proceedings.

months unless the Commission finds the extension of such requirements necessary.³⁹ Instead, carriers should bear the burden of demonstrating that they are no longer necessary.

V. CONCLUSION

Rate Counsel concurs with Commissioner Copps' assessment of the value of data collection:

The collection and analysis of solid communications-related data is a linchpin in the Commission's ability to make sound decisions and provide useful guidance and assistance to consumers, states, industry-participants and other stakeholders. That is why it has been so troubling to see in too many instances the Commission headed down the road of collecting less data.⁴⁰

Rate Counsel reiterates its support for data to be reported by industry, collected and made available by the FCC, and, to the greatest extent possible, to be public.

Respectfully submitted,

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December 12, 2008

³⁹ / AT&T, at 11-12.

⁴⁰ / *Order and NPRM*, Statement of Commissioner Michael J. Copps Approving in Part, Dissenting in Part, Concurring in Part, at 50.